In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1706

PITT RIVER TRIBE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Claims (Pet. App. A) is reported at 485 F. 2d 660. The opinion of the Indian Claims Commission is reported at 13 Ind. Cl. Comm. 369.

JURISDICTION

The judgment of the Court of Claims was entered on October 17, 1973. On January 10, 1974, the Chief Justice extended the time for filing a petition for a writ of certiorari to and including March 16, 1974, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

QUESTIONS PRESENTED

1. Whether the Court of Claims properly declined to reopen a 1964 judgment of the Indian Claims Commission.

2. Whether the Court of Claims properly dismissed (without prejudice) petitioner's claim that the Act of September 21, 1968, 82 Stat. 860, providing for the establishment of a roll of recipients for the 1964 judgment, was unconstitutional.

STATUTES AND RULE INVOLVED

25 U.S.C. 70(u) provides:

> (a) When the report of the Commission determining any claimant to be entitled to recover has been filed with Congress, such report shall have the effect of a final judgment of the Court of Claims, and there is authorized to be appropriated such sums as are necessary to pay the final determination of the Commission.
>
> The payment of any claim, after its determination in accordance with this chapter, shall be a full discharge of the United States of all claims and demands touching any of the matters involved in the controversy.
>
> (b) A final determination against a claimant made and reported in accordance with this chapter shall forever bar any further claim or demand against the United States arising out of the matter involved in the controversy.

28 U.S.C. 1505 provides:

> The Court of Claims shall have jurisdiction of any claim against the United States accruing after August 13, 1946, in favor of any tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States or Alaska whenever such claim is one arising under the Constitution, laws or treaties

of the United States, or Executive orders of the President, or is one which otherwise would be cognizable in the Court of Claims if the claimant were not an Indian tribe, band or group.

28 U.S.C. 2501 provides in pertinent part:

Every claim of which the Court of Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues.

Rule 152 of the United States Court of Claims reads in pertinent part as follows:

(b) * * * On motion * * * the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 151(c); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than 1 year after the judgment, order, or proceeding was entered or taken. A motion under this paragraph (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of the court to enter-

tain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. * * *

The pertinent provisions of the Act of September 21, 1968, 82 Stat. 860, are set forth at Pet. 8-11.

STATEMENT

The Court of Claims here rejected petitioner's 1972 petition to set aside a 1964 judgment of the Indian Claims Commission and dismissed, without prejudice, petitioner's challenge of the Act of September 21, 1968, providing for the establishment of a roll of beneficiaries of the judgment (Pet. App. A).

The Pitt River Tribe filed a timely claim with the Indian Claims Commission pursuant to the Indian Claims Commission Act (Act of August 13, 1946, 60 Stat. 1049, 25 U.S.C. 70 *et seq.)* for compensation for lands in California taken from them. *Pitt River Indians of California* v. *United States,* 7 Ind. Cl. Comm. 815. The Commission, after a preliminary hearing, found that bands of the Pitt River Tribe had held aboriginal title to 11 tracts of land in California, *id.,* at 844-847, and that their title was extinguished on March 3, 1853, *id.* at 847-848, 862.

On July 20, 1964, the Commission approved a settlement of land claims in California entered between the United States and several claimants including the Pitt River Tribe. *Thompson* v. *United States,* 13 Ind. Cl. Comm. 369, 385-388, 512. On the basis of this settlement the Commission entered a final judgment for $29,100,000 in favor of the petitioner and others. *Id.* at 543a-543b. This final determination was reported to Congress by the Commission pursuant to 25 U.S.C. 70t in July 1964, and by Act of October 7, 1964, 78 Stat. 1023, 1033-1034, Congress appropriated funds for payment of the judgment.

By Act of September 21, 1968, 82 Stat. 860, Congress provided for the compilation of a roll of Indians to share in the settlement, and the funds were subsequently distributed.

In September 1972, the petitioner presented to the Court of Claims petitions to invalidate the judgment of the Indian Claims Commission and for leave to file a belated appeal from the judgment of the Commission. These petitions were rejected for filing, one by the Clerk and the other by order of the court. Similar petitions filed with the Indian Claims Commission were denied by order of the Commission (Pet. App. A, 2). In December 1972, the petitioner filed in the Court of Claims a Petition to File a Belated Appeal, or to Set Aside or Modify a Judgment of the Indian Claims Commission (Pet. App. B), and for the first time invoked the court's jurisdiction under 28 U.S.C. 1505, which gives the court jurisdiction over Indian claims accruing after August 13, 1946. The court permitted this petition to be filed pursuant to that statute (Pet. App. A, 2).

The government filed a Motion for Summary Judgment (Pet. App. E) which the court granted in its opinion and judgment of October 17, 1973 (Pet. App. A). The court rejected petitioner's request to reopen the 1964 judgment of the Indian Claims Commission, finding that petitioner's reasons for reopening the case failed to meet the requirements of Court of Claims Rule 152, which corresponds to Rule 60(b), Fed. R. Civ. P. The court dismissed without prejudice petitioner's claims under the Act of September 21, 1968, *supra*, for want of an adequate exposition of those claims (Pet. App. A, 9-10).

ARGUMENT

1. The decision of the Court of Claims not to reopen the judgment of the Indian Claims Commission approving the settlement made by petitioner is correct and does not warrant further review. The court ruled that under the standards of its Rule 152(b) (which is substantially identical to Rule 60(b), Fed. R. Civ. P.) petitioner failed to satisfy "the burden * * * to come forward with a specific prima facie case of wrongdoing" that would have justified this belated reopening (Pet. App. A, 9). The court also noted (Pet. App. A, 7-8) that all of the challenged events, except the enactment of the Act of September 21, 1968, providing for a roll for distribution, occurred in or before 1964. This suit was brought some eight years later, and the court noted that "[n]o adequate excuse for eight years of inaction is offered." *Id.* at 8.[1] We add that the issues raised before the Court of Claims were essentially the same issues raised and ruled upon by the Indian Claims Commission when it approved the settlement in the first place. *Thompson* v. *United States, supra,* 13 Ind. Cl. Comm. 369, 385-392, 399-418, 434-443, 449-450, 454-455, 486-507, 512, 537. The Court of Claims, in these circumstances, acted within the proper scope of its discretion in refusing to reopen the case. See, interpreting Rule 60(b), Fed. R. Civ. P., *Ruiz* v. *Hamburg-American Line,* 478 F. 2d 29, 31 (C.A. 9); *Wilkin* v. *Sunbeam Corp.*, 466 F. 2d 714, 717 (C.A. 10), certiorari denied, 409 U.S. 1126; *Martella* v. *Marine Cooks and*

---

[1]The court also noted (Pet. App. A, 6-7) that the claims to reopen the suit are barred by its statute of limitations, 28 U.S.C. 2501 (see p. 3, *supra*).

Stewards Union, 448 F. 2d 729, 730 (C.A. 9), certiorari denied, 405 U.S. 974.[2]

2. The court held that petitioner's challenge of the 1968 Act was not barred by laches and that the Court of Claims has jurisdiction to hear it (Pet. App. A, 9). But the court found that petitioner had not set forth any "clearcut grounds" on which the Act could be held unconstitutional and that the court knew of none. "In light of the lack of an adequate exposition of these claims," the court dismissed them "without prejudice, and without comment as to their merit" (Pet. App. A, 10). Since petitioner may still recast its petition and arguments as to these claims and present them to the Court of Claims pursuant to 28 U.S.C. 1505, there is no reason for review by this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

WALLACE H. JOHNSON,
Assistant Attorney General.

A. DONALD MILEUR,
RAYMOND N. ZAGONE,
DEAN K. DUNSMORE,
Attorneys.

SEPTEMBER 1974.

---

[2]Whether the Court of Claims had jurisdiction apart from the limitations problem to reopen a final decision of the Claims Commission on which Congress had acted is not free from doubt. Compare *Carney* v. *United States,* 199 Ct. Cl. 160, 462 F. 2d 1142; but see Pet. App. A, 5-6.